2/May/53

1953.

File No. 1/53

Legal Dept

BRANCH

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Subject:—

D/May/F Opinion on the

Bombay Hay (Control)

Order, 1953

O/May/53

File No. 1/53

Gen. 194 e.

C O N T E N T S.

Legal Department File No. G.May/53 (G-1).

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The question for consideration is whether Shri Pandy holder of a Hay Retailer's licence can be successfully prosecuted for the following offences :-

(i) allowing non-licensees to trade on his licence

(ii) trading in contravention of the suspension Order at page 17.

As regards the first charge, it is stated by the Hay Inspector that Shri Pandya was never seen in the Andheri yard and that non-licensees such as Shri Brohmadeo, Ramsevak and Harisevak were trading on his licence. The licensee says that Brahmadeo was his servant. As he ha not said anything about the other two, the Civil Supplies Department presumes that the he had allowed these other two to trade on his license. Shri Pandya should have been again asked to state what he has to say about these other two. It may be true that this amounts to trafficking in license but this kind of irregularity is not made punishable anywhere in the Bombay Hay (Control) Order, 1951. Shri Harsevak and Ramsevak should be prosecuted under clause 11 (iv) for carrying on the business of a retailer without a license. But they have not given separate cas memos of their own on their own books and they would successfully contend that they were licensee's salesmen or servants. No prosecution is therefore possible on this charge.

On the second charge, even though it is one transacti prosecution can lie for it is evident that the licensee continued his trade even after 25th July 1952.

Clause 25 (II) applies to access to premises and then producing the documents. This case would fall under clause 25 (I) (b) but a prosecution would not fall under clause

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would not succeed as the mere statement of Rajkishore will not be sufficient to prove that what the licensee has stated is false.

Sd/-P.M.L.

Remembrancer of Legal Affairs.

U.R. to C.S.D.,No.G- 10 , dated the 5th January 1953.

C.G.R./16-6

Office of the R.L.A.

Clause 12(ii)(a) of the Bombay Hay (Control) order, 1951 provides that no Hay Commission Agent's licence shall be granted to any person who, in the opinion of the licensing authority, has not been carrying on the business a hay commission agent continuously for any twelve consecutive months during the calendar years 1944-50. Clause 12(ii)(b) provides that notwithstanding anything contained in paragraph (a) the State Government may direct the issue a hay commission agent's licence to any person for special reasons recorded in writing. Shri Ramshankar was granted a Hay Commission Agent's licence as he had eligibility under clause 12(ii)(a). From the Partnership Deed at page 69A ante it is clear that Shri Ramshankar who had the license agreed to the business being conducted by Shri Chitannand on his sharing half the profits or losses of the business. The expenses of running the business were also to be borne half to half. Even though under condition (3) of the Deed the responsibility of breaches of law is agreed to be taken by Shri Chitanand, the licensing authority would recognise only Shri Ramshankar as the licensee. The partners. parties may therefore be asked to apply for the licence being issued in the name of a firm with Shri Ramshankar and Shri Chitanand as partners. Otherwise the licence will have to be cancelled as the licensee is indirectly trafficking on the licence.

o/c : Sd/- P.M.L.

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Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-19 dated the 7th January 1953.

C.G.R./16-8

Office of the R.L.A.

The question for consideration is whether prosecution of Nagarbhai Patel a holder of Hay Commission Agent's licence is feasible for selling hay at a rate higher than the controlled rate in contravention of clause 4 of the Bombay Hay (Control) Order, 1951.

The allegation against the licensee is that he sold -

(i) 4115 lbs. of hay and showed it in the cash-memorandum of the purchaser as 4155 lbs.; and

(ii) 4605 lbs. of hay and showed it in the cash-memoranda of the four purchasers together as 5095 lbs.;

and even though the rate of sale was shown at ₹48/- per 1,000 lbs. which is the controlled rate, he thus charged excess by showing more weitht.

As regards the first sale the difference in weight is below 1 percent. In this explanation at page 39 the licensee has also pointed out that the difference is negligible and is attributable to weather conditions and variations in different spring balances. This explanation is such as will be acceptable to any court. Besides the offence is trivial as the excess shown is only 40 lbs. and it is therefore not advisable to launch any prosecution for this offence.

As regards the other case, the licensee sold hay to four merchants. His explanation is that mistake in calculation was committed by his new salesman and when the excess weight was detected after 3 or 4 days while writing the account books, the excess was refunded to the purchasers. Three out of the four merchants were contacted by the Inspector and they have stated that the excess was refunded to them by the licensee. They produced letters dated the 2nd May 1952 received by them from the licensee. The Inspector seems to hold that these purchasers seemed to be ~~willingly suppressing~~ ~~their evidence~~

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to be well tutored bythe licensee.

Whatever may be the truth, the purchasers will not support our case in the court and a prosecution will therefore not succeed. The case is not a fit one for being referred to the Crime Branch II.

o/c Sd/- P.M.L.

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Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G- 23 , dated the 7th January 1953.

C.G.R./16-8

Office of the R.L.A.

As Shri Kedarnath failed to give correct particulars regarding the quantity of hay sold in the cash memoranda dated 1st December 1951 and 3rd December 1951 he can be prosecuted for breach of clause 5 of the Bombay Hay (Control) Order, 1951 in respect of both the transactions.

Even though the controlled rate of Rs. 48/- is shown in the cash memoranda, by mentioning more quantity than was actually sold, the licensee has in fact sold hay at a price higher than that fixed under clause 4 of the Order. He can therefore be prosecuted for breach of that clause.

More weight was shown in the two cash memoranda obviously with the intention that if the accounts are checked by the licensing authority or any officer authorized by such authority, erroneous opinion regarding the sale at controlled price maybe formed by such authority or officer. Therefore section 192, Indian Penal Code will also be attracted even if the pencil correct on made in one of the cash memoranda is ignored.

o/c Sd/-P,w.L.

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Remembrancer of Legal Affairs.

C.G.R./16-8 U.R. to C.S.D ., No.G- 31 , dated the 13th January 1953.

Offices of the R.L.A.

The Director of Civil Supplies (Fuel and Fodder) wants to know whether hay kept by consumers with the hay merchants can be frozen or not under the relevant clauses of the Bombay Hay (Control) Order, 1951.

Clause 9 of the Bombay Hay (Control) Order, 1951 provides interalia that the Director of Civil Supplies, Bombay or the District Magistrate may by a notice in writing, direct any person or class of persons holding stocks of hay whether on his own account or on account of any other person, not to use, remove, sell or otherwise dispose of such stocks except under a permit issued by the Director of Civil Supplies or the District Magistrate as the case may be and such person or class of persons shall comply with such directions. Under this clause therefore a freezing order can be issued in respect of stocks belonging to any person whether he be a dealer or consumer and whether is he is holding it on his own behalf or on behalf of any other person. The freezing of the stocks of hay already sold to the consumers and therefore belonging to them but kept with the hay merchants would therefore be legal if it is done by a proper order issued under clause 9. It is however, for the Civil Supplies Department to consider whether it would be expedient to do so.

c/c Sd/- P.B.L.
28/1

Remembrancer of Legal Affairs.

U.R. to C.S.D., No.C- 62 dated the 28th January 1953 .

C.G.R./16-8

Office of the A.R.I.A.

Shri Chandulal J.Shah applied for a hay retailer's licence on the 4th January 1952 in the name of Haji Ismail Karim and Company. There is an endorsement on the application for the licence that fee and deposit has been recieved by the Directo of Civil Supplies through the Association. The deed of assignment is not in the papers but from previous noting it is evidnt that at present there are two partners in the firm of Haji Ismail Karim and Company viz. Shri C.J. Shah and Shri Keshavlal Hiracband. Even though the money has been paid through the Grain Merchants Association, there is no objection to return it to Shri Chandulal J. Shah on his producing an authority from the other partner to receive the same on behalf of the firm.

S/d Sd/- P.M'I.

26/3 R L A

U.R.to C.S.D., No. G- 180, dated the 20th March 1953.

C.G.R./16-8

Office of the R.L.A.

Clause 18 of the Bombay Hay (Control) Order, 1951 read with t Government Noticifation, Civil Supplies Department No.34Ha. (e), dated the 24th August 1951 requires a hay commission agent to p to the licensing authority a deposit of Rs.500/-. Shri Devdutt Bansidhar paid Rs 500/- as deposit while submitting his application for a hay commission agent's licence inform 'A' appended to the Bombay Hay (Control) Order. It is true that the attachment order under rule 52, order 21 of the First Schedule t to the Civil Procedure Code was received by the licensing authority from the Small Causes Court before a licence was issued to Shri Devdutt. But as the amount or Rs 500/- had been paid by him in connection with the grant of a licence, it could not be said to be due to him from, or held on his behalf by, the licensing authority unless the latter refused to grant him the licence under the provisions of clause 12(iii) of the Bombay Hay (Control) Order. The licence has since been issued. It is not therefore necessary to require the licensee to pay a further sum of Rs 500/- as deposit so as to enable the licensing authority to hold the previous amount of Rs ~~Rs~~ 500/- subject to the Court's further order (Please see R.L.A's opinion No. G- 524, dated the 10th October 1952). The Civil Supplies Department may, ~~therefore~~ send some responsible officer to the Court on the 2nd April 1953 to bring the above position to the notice of the court and then act according to the Court's orders.

o/c Sd/ P.M.L.
20/3

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G- 177 dated the 20th March 1953.

C.G.R./16-8

Office of the R.L.A.

The only question that is referred to Legal Department for opinion is whether prosecution of the licensee Rajnarayansinh for altering the entries in the cash memos would succeed on the available evidence.

(The case against the licensee Shri Rajnarayansingh is that he made alterations in the case memos Nos.262,264,265 & 266 as follows :-

Cash memo No.262 - changed the rate from Rs 49/- to Rs 40/- and the total from Rs 372-8-0 to Rs 304/- name of the customer is also changed.

Cash memos 264 and 265 - changed the rate from Rs 53/- to Rs 48/-. But the total remained to be changed and it works out at the rate of Rs 53/-.

Cash memo No. 266 - Changed rate from Rs 53/- to Rs 48/- The total remains unchanged and works out at Rs 53/-

The licensee who was asked to show cause why action should not be taken against him for this offence, has stated in reply that changes in the cash memos were made only at the request of customers and thereby he was a loser. On perusal of the cash memos the alterations are apparent but the duplicates with the customers are not produced by the three customers who were contacted neigher are they prepared to say anything in the matter. One customer's address could not be traced. As the original cash memos of the carbon duplicates which are before us, are not available and as the pruchasers are not prepared to depose against the licensee, prosecution under section 193 Indian Penal Code is not likely to succeed.

o/o Sd/-

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Remembrancer of Legal Affairs.

U. R. to C.S.D.,No. G- 244, dated the 27th April 1953.

C.G.R./16-8

Office of the R.L.A.

Clause 15(1) of the Bombay Hay (Control) Order, 1951 provides that the licensing authority may, at any time, for reasons to be recorded cancel or suspend any licence issued by it. The Special Officer Shri Gurjar has stated in his note dated the 7th April 1953 that Shri Dube - a licensee visited his residence probably in connection with his request that he may be granted a Hay Commission Agent's licence in place of the Hay Retailer's licence which he was holding. Shri Gurjar asked Shri Dube to see him in his office and Shri Dube left the place reluctantly. A mere visit of this type is not likely to be considered by the Court as sufficient reason for suspending the licence. It is true that the licensing authority has discretion in suspending the licence. But the Court can always go into the question whether the discretion was reasonably exercised or not. The proposed action would not therefore be considered as legal.

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Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-250, dated the 29th April 1953.

Office of the R.L.A.

It appears that the Deputy Supply and Movement Officer, Ministry of Food and Agriculture, Jaisalmere House, Mansingh Road, New Delhi, called for tenders for the supply of Hay and Kadbi from stations in Madhya Pradesh, Madhya Bharat, Hyderabad, Bhopal and United Provinces as per terms and conditions stated therein. Shri R.C. Maheshwari of Lalitpur in response to it offered to supply Kadbi loose at Rs 2-4-0 per a maund and dulytied with hands at Rs 2-6-0 per maund both F.O. R. Lalitpur. In his further letter he stated that he would supply 15,000 maunds of Kadbi and in his next letter dated the 17th February 1953 he raised it to 25,000 maunds of hand-pressed Kadbi, expressly stating that in case of non-availability or insufficiency of wagons at the required time there should be no commitment on his part for the supply of the quantity within the stipulated period. Although the tenders were intited by the Ministry Food and Agriculture, Central Government, and the offer was made to that Government, the Civil Supplies Department, Government of Bombay, wrote to Shri Maheshwari on 26th February 1953 accepting the offer subject to certain conditions one of which was : "You should sign the necessary agreement in the prescribed form which will be sent to the Ministry of Food and Agriculture, Government of India and pay the required security when called upon to do so by the Deputy Supply and Movement Officer, Ministry of Food and Agriculture, New Delhi." Thereafter no agreement was executed by him, but in response to a telegram dated 25th February 1953 he sent a sample wagon from Jakhlon to the Mamlatdar, Chalisgaon. Thereafter the Wagon Programme was issued under Memoranda dated 24th March 1953; 30th March 1953 and 1st April 1953. The contractor did not make the supplied according to the programme but has raised the objection that the wagon programme was supplied to him very late. He has however offered to supply a lesser quantity, i.e. 2500 maunds.

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The Deputy Supply and Movement Officer, in his letter dated 27th April 1953 has advised the Director of Civil Supplies,

Bombay, to accept that quantity of Kadbi in view of the fact that the Wagon Programme was supplied to the contractor at a late stage and no formal contract was executed by him. The Civil Supplies Department proposes to issue a notice to the contractor t show cause why the contract should not be terminated, and the R.L.A. is requested to advise whether the acceptance of the smaller quantity of Kadbi would be detrimental to the Government's interest in respect of the termination of the contract.

As stated above the tenders were invited by the Central Government and Shri Maheshwari submitted his tender to the Central Government. Further, one of the conditions subject to which the Civil Supplies Department, Bombay, accepted his offer was that he should execute an agreement with the Central Government. That being so, the contract, even if it could be legally spelt would be between the Central Government and Shri Maheshwari. The Central Government itself is advising the Civil Supplies Department, Bombay, to accept whatever quantity shri Maheshwari is offering in view of the fact that the wagons programme was not supplied to him in time and no agreement has been executed by him. In the circumstances, the advice of the Central Government may be accepted; and it would be open to the Civil Supplies Department to accept the smaller quantity of Kadbi offered by Shri Maheshwar.

o/c Sd/-

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Remembrancer of Legal Affairs.

C.G.R./16-8 U.R. to C.S.D., No. G- 25 262, dated the 5th May 1953.

Office of the R.L.A.

Clause 7 of the Bombay Hay (Control) Order provides that no person shall use or possess any stocks of hay for any purpose other than for feeding cattle except under and in accordance with a permit granted by the Director of Civil Supplies, Bomb or the District Magistrate concerned. As the stock is immediately required for despatching to the scarcity areas, the local officers may make a panchnama about the quantity and the quality of the stock and the stock should be allowed to to be despatched after keeping a sample thereof. The matter may thereafter be entrusted to the police with a view to launch prosecution.

o/c Sd/- P.M.L.
11/4
Remembr nder of Legal Affairs.

U.R. to C.S.D. (Hay), No. G- 214, dated the 13th April 1953.

C.G.R./16-8

Office of the R.L.A.

Under clause 11(iv) of the Bombay Hay (Control) Order, 1951, no person can carry on business of a hay retailer at any grass yard or depot in Greater Bombay and the Scheduled villges except under and in accordance with the conditions of a valid licence. It is true that Shri Gupta's licence was cancelled by an order dated the 26th May 1952 and which seems to have been despatched to him on the 27th May 1952 and which was to come into force on the 10th June 1952. But except for the report of the Hay Inspector and the statements given by Shri Punwasi on the 10th and 18th of June 1952, there is no other evidence to show that Shri Gupta carried on the business of selling hay after the licence was withdrawn. The statement dated the 10th June 1952 at page 47 which has been signed by Shri Punwasi on behalf of Shri Gupta states that there was a balance of 179 bales, that no bales were purchased on that day and that all the 179 bales were disposed of. It can be inferred from this that the said bales were disposed of on the 10th June 1952. But it is not made clear to whom they were sold and at what palce. It is true, however, that in his statement dated the 18th June 1952 Shri Punwasi describes himself as the salesman of Shri Rambharose Brijlal Gupta and states that he sold 179 bales of hay on the 10th June 1952 and closed the business. Even though the transaction was one, as Shri Gupta was already in the trade, it can be said that he continued with the business. But the evidence as a whole, consisting only of the declaration dated the 10th June 1952 and statement dated the 18th June 1952 of Shri Punwasi, does not appear to be sufficient for a successful prosecution. It would have been better if attempts had been made to trace the purchasers in whose favour the bales were disposed of; but it appears doubtful whether at this distance of time, it will be possible to find out the purchasers.

o/c Remembrancer of Legal Affairs. Sd/-

U.R. to C.S.D., Hay No.G- 302 dated the 25th May 1953.

Legal Department.

The R.L.A. is requested to advice whether the following dealers inhay can be prosecuted for breach of various clauses of the Bombay Hay (Control) Order, 1951, respectively shown against them :-

1. Shri Kondaji Udaji.	Clauses 20(1) and Clause 23.
2. Shri Ratilal Gordhandas.	Clauses 3, 20(i) & 23.
3. M/s.Shivlal Punamchand & Co.	Clauses 3,20(i) & 23.

The allegations against eachof the persons are these:-

1. Shri kondaji Udaji who ho ds a hay commission Agent's licence inform E appended to the Order was authorised to carry onbusiness at Hay Bunder, Sewri. He was found to be inpossession of 400 bales of hay at Sewri and 2000 bales of hay at Vadala. These bales are said to have been imported from various places in Kolaba District since November 1952. The hay had been frozenby the order issued by the Director of Civil Supplies (Fuel & Fodder) under Clause 9 of the Hay Control Order on 6th May 1953. On that day a notice was also issued tohimto show cause why action should not be taken against him under clause 20(i) of the Order for being inpossessionof quantity of hay in excess of the quantity reasonably required to be held by him for the purpose of his business. In reply Shri Kondaji pointed out that he had entered into a contract with the Haffkine Insitute and Biological Products, Bombay, for the supply of 60,000 to 65,000 lbs. of hay per month; and that the stock was maintained so as to enable him to fulfil the contract. The period of the contract is upt o February 1954. He further pointed out that he was dealing with the commodities at Tank Bunder whichremains closed for business

during the monsoon. On making inquiries as to how he accumulated such a large stock, it was disclosed by looking into his account books that he had purchased about 1357 bales of hay from Shri Shivalal Punamchand during the period from 20th January 1953 to 30th April 1953 and 1132 bales from Shri Ratilal Gordhandas during the period from 14th November 1952 to 20th March 1953. In view of the contracts entered into with the two institutions a release order in respect of 15500 lbs. of hay has since been issued. A questionhas however been raised whether a prosecution can lie against him under Clause 20(i) for holding excess quantity of hay and under Clause 23 for having stored 2000 bales at Vadala.

2. The next case is that of Shri Ratilal Gordhandas. Two sorts of allegations are made against him, first being inpossession of 1300 bales of hay at Hay Bunder, Sewri. This stock was frozen by the order dated 6th May 1953 p. 23 ante. He was laso asked to state why he should not be prosecuted under clause 20(i). From inquiries made it is disclosed that these 1300 bales are owned by one Ganpat Gosavi Patel and that Ratilal Gordhandas is the selling Agent. No action is proposed against him in respect of ~~xx~~ this stock. The other allegation arises on account of the statement submitted by Shri Kondaji inwhichhe has made a mention that he has purchased 1130 bales from Shri Ratilal Gordhandas during theperiod from 14th November 1952 to 20th March 1953. Since there was a ban on the export of hay from Kolaba District, from 1st Feruary 1953, it is alleged that the hay has been smuggled incontraventionof Cluse 3 of the order.

3. The last case isthat of Messrs. Shivala Punamchand & Cp., also a hay commission agent authorised to carry on business at Bombay Central. It is stated

that on 2nd May 1953 a Country Craft carrying 150 bales of hay arrived at the Bunder. The hay was disposed of by Shri Shavlal. Secondly, as in the case of Shri Hatilal, as stated inpara 2, above, this gentleman also sold 1357 bales of hay to Shri Kondaji Udaji during the period from 20th January 1953 to 30th April 1953. It is stated that the hay was imported from Kolaba District inspite of the ban.

4. Taking first the case of Shri Kondaji Udaji, Clause 20(1) of the Bombay Hay (Control) Order, 1951, provides that no hay commissi n agent shall acquire any stock of hayif bydoing so, the quantity thereof inhis possession under his control at any time shall exceed the quantity reasonably required to be held by him for thepurpose of his business, The Standard of normal requirements has not been prescribed in the order and ordinarilyit will be a question of fact in each case as to what is the quantity which a dealer can have with him for thepurposes of his business. Shri Kondaji has inhis possession 2 400 bales of hay equivalent to 3,00,000 lbs; he had entered into two contracts according to whichhe is bound to supply 60,000 to 65,000 lbs. per month to the Haffkine Institute and the Biological Produces. Afthough he holds stock sufficient to enable him to fulfil the contract for six months, reasons given by him are that Tank Bunder at which place he deals with the commodities remains closed during the rainy season and probably he would be unable to import any quantity of hay from Kobala District during that season. Taking into consideration the contracts entered into by Shri Kondaji withthe two institutions, the C.S.D. has already decided to release part of the goods. It is not, therefore, clear why that Department considers that Shri Kondaji holds stock in excess of his normal business requirements.

The other questionis whether a prosecution can lie against Shri Konkji under clause 23. Under that clause unless specially authorised bythe Director of Civil Supplies, Bombay, no holder of a hay commission agent's licence shall sell nay received inany Railway Grass yard or Depot in Greater Bombay at any place other than such Railway Grass Yard or Depot approved by the Director of Civil Supplies. By the more fact that he has stored 2000 bales of hay near the Salt Pans, at Vadala, it cannot be deduced that he has been carrying on sales at that place whth is not a place of business authorised under the licence granted to him. The Civil Supplies Department is also requested to clarify how it considers that mere storage at a place other than the place of business may lead to breach of clause 23.

5. The next case is that of Shri Ratilal Gordhandas. The first allegation against him is that he imported hay from Kolaba District, in breachof theban on expprt under clause 3 of the Order which has been extend d to that district. The allegation made by the civil supplies Department is however presumtive for it is stated that since he sold 1132 bales to Shri Kondaji Udaji, he must have smuggled the goods from the district. There is however no evidence to prove this allegation against him.

In regard to the question whether he can be said to have co mitted a breach under clause 20(i) it is now admitted that the 1300 bales at Hay Bunder belong to Shri Patil andthat Shri Ratilal is merely a selling agent. The question of prosecuting him under that clause does not therefore survive. In regard to the question whether he can be prosecuted for breach of clause 23, it may be stated that Ratilal holds a licence under which he is authorised to carry on business at Bombay Central, Bandra, Andheri and Borivli. Though it is stated by Shri Kondaji Udaji who carried onbusiness at Hay Bunder that he purchased hay from Shri Ratilal Gordhandas, there

is nothing to show that the sale by Shri Ratilal took place at Hay Bunder, the place where he was not authorised to carry on business. In fact this allegation has been raised only on the strength of the statement made by Shri Kondaji. No explanation of Shri Ratilal in this respect has been obtained by the Civil Supplies Department. Unless further inquiries are made with regard to this point, it is not possible to say whether breach of clause 23 has been committed.

6. The last case is that of Shri Shivlal Punamchand & Company. In regard to the breach of clause 3 what is stated in paragraph 5 above in the case of Shri Ratilal is true also in this case. As regards the breach of clause 20(1) it is not clear on what basis the Civil Supplies Department considers that he held excess quantity of hay at any time.

As regards the contravention of clause 23 it is true that in his letter at page 43 ante he has stated that he has been trading in hay for the last none years. It is true that there is a sort of admission in his statement that has been carrying on business at Hay Bunder although that place is not authorised by the licence granted to him but in view of his long standing in the trade it is likely that this will be considered merely to be a techincal breach. A prosecution on this issue does not appear to be advisable. A mere warning should be sufficient.

7. The other question raised by the C.S.D. is whether pending decision of these cases, it would be open to Government to dispose of the frozen stocks. In this respect attention of the C.S.D. is invited to R.L.A.'s opinion No. G.214, dated 13th April 1953, in the case of the National Straw Products Co. As advised therein a panchnama can be made of

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can be made of the quantity and quality of stock before despatching it to its destinations.

o/c Sd/-

Additional Secretary to Government.

U.R. to C.S.D.No. G-339 dated the 10th June 1953.

C.G.R./18-8

Legal Department.

The question raised for the consideration of the R.L.A. is whether a prosecution can lie against the following persons for breach of any of the provisions of the Bombay Hay (Control) Order, 1951.:-

Shri Khimji Lakhamsi

Shri Bhagwanji Ghelabhai,

Shri Vallabhadas Bahgwanji, and

Shri Liladhar Bahgranji.

2. The facts in respect of each of the dealers are as follows:-

Shri Khimji Lakhmsi holds a hay retailer's licence in form H appended to the Order authorising him to carry on business at Bombay Central, Mahim, Bandra, ~~and~~ Andheri and Borivili. When the godowns at Annesley Road were searched, it was found that he had in his possession about 1,000 bales of hay and paddy straw. This stock was frozen by an Order issued by the Director of Civil Supplies under clause 9 of the Hay (Control) Order, on the 9th May 1953. Simultaneously a notice was also issued to him to show cause why action should not be taken against him for breach of clause 20(1) of the Order for being in possession of hay in excess of the normal quantity required for the purpose of his business. In reply to the notice, the licencee stated that he had disposed of all stocks of hay in favour of municipal contractors between the period from 9th May 1953 to 12th May 1953, before the receipt of the Orders of the Director of Civil Supplies and the balance which was left with him was of Khara Pendha. He further explained that due to the low purchasing caracity of the consumers, there was no other laternative for him but to store the hay and sell to his customers as and when they required on credit.

3 The next case is that of Shri Bhagwanji Ghelabahai who holds a co mission agent's licence authorising him to carry on business at Bombay Central and the Suburban goss yards. When the godowns were first inspected by the Civil Supplies

Supplies Department Officers, it was alleged that he had in his possession about 1,500 bales of hay and paddy straw. A freezing order was made and a show cause notice was also issued to him as in the case of Shri Khimji Lakhamsi. In reply, he stated that the stock in his possession was about 750 bales and not 1500 bales as mentioned in the notice, of these 150 bales are of Khara Pendha. This dealer has entered into contracts with the Royal Western India Turf Club Ltd. for supply of about 10,000 lbs. per month and with one Mohanlal Khemchand for the supply of 40,000 lbs. of hay during the monsoon. He states further that the bales, at present in his possession, have been already sold to the Turf Club.

4. The third case is that of Shri Vallabhdas Bhagwanji who holds a retailer's licence authorising him to carry on business at Bombay Central. He was found to be in possession of about 50 bales of hay and paddy straw. This stock was also frozen and a show cause notice was issued to him. In reply to the show cause notice this dealer states that as he has to carry on his trade in a very small place for the last several years, he has no go but to keep the stock in store for facilitating supplies to his customers.

5. The last case is that of Shri Liladhar Bhagwanji. It was found that this gentleman had in his possession about 40 bales of hay. He does not hold any sort of licence but is found to be trading surreptitiously. This stock was also frozen and show cause notice issued to Shri Liladhar Bhagwanji. His case has been referred to the Deputy Commissioner of Police, Crime Branch II, for making further inquiries and taking suitable action against him for breach of clause 11 and 20(ii) of the Bombay Hay (Control) Order, 1951. In reply to the show cause notice, he denies wonership of the hay and states that it belongs to his brother.

6. In the concluding portion of their note dated 21 May

21st May 1953, the Civil Supplies Department has expressed the view that the above parties have committed breaches of clauses 20(i) & 23 of the Bombay Hay (Control) Order, 1951 Clause 20(i) provides that no Hay commission agent or Hay retailer shall acquire any stocks of hay, if by doing so, the quantity thereof in his possession or under his control at any time shall exceed the quantity reasonably required to be held by him for purposes of his business. What is the normal requirement of licensee for the purposes of this clause will be a matter of fact in each case; no standard for finding this out has been laid down in the Order itself. It is, therefore, for the Civil Supplies Department to find out whether the quantity of hay found in the possession of the licensees can be said to be in excess of their ~~xxxxxxx~~ normal requirements taking into consideration their average business, the contracts entered into by them etc. In their noting the Civil Supplies Department has not stated the ~~xxxx~~ basis on which they consider that these licensees have exceeded the normal requirements. It is true that Shri Khimji Lakhamsi was found in possession of 1,000 bales of hay which he subsequently disposed of before the freezing order and the show cause notice could be served on him. But unless the extent of his average business is known, it is not possible to say definitely whether he can be said to be in possession of excess quantity of hay in violation of clause 20(i) of the Order. So far as Shri Bhagwanji Ghelabhai is conrerned he has entered into contracts with the Truf Club and with the trustees of two temples and with Shri Mohanlal Khemchand. The hay in his possession is apparently stored for the purposes of enabling him to fulfill these contracts He cannot, therefore, be said to have committed a breach of clause 20(i). Lastly in the case of Vallabhdas Bhagwanji who was alleged to have been in possession of 50 bales of hay he has stated that due to shortage of accommodation he had to store the bales for the sake of supply to his consumers as

and when required by them. In his case too, the Civil Supplies Department has not stated the basis on which it considers that he can be said to be holding excess quantity, and no definite opinion can , therefore, be expressed on this point in his case.

7. The next question raised is whether the licensees can be prosecuted for having committed a breach of clause 23 of the Order,. Under that clause unless specially authorised by the Director of Civil Supplies, no holder of a Hay Commission Agent's Licence or Hay Retailer's Licence can sell hay recieved in any grass yard or depot in Greater Bombay at any place other than such railway grass yard or depot. It is true that both Shri Khimji Lakhamsi and Bhagwanji Ghel bhai have stated that they disposed of 1,000 bales and 600 bales respectively, but there is nothing in these papers to show at what places the sales were completed. Similarly no mention has been made of sales effected by Vallabhadas Bahgwanji. There is no evidence to point out that the e three licensees has effected the sales at places other than those a proved by the Director of Civil Suplies. There is thus nothing to show a breach of clause 23 of the Order. Mere storage at a particular place is not sufficient to show that sales take place there.

8. So far as the case of Liladhar Bhagwanji who does not hold any sort of licence issued under the Bombay Hay (Control) Order is concerned, as the matter is already referred to the Commissioner of Police for investigation and further action, the police report may be awaited.

9. The last question is whether pending decision of all the these cases, the frozen stock should be disposed of by Government. In this respect attention of the Civil Supplies Department is invited to R.B A's opinion No. G- 214, dated the 13th April 1953 in the case of National Straw Products Company; and as advised therin, there would be no objection to despatching the hay to the required places or releasing

releasing the same after making a panchnama of the quantity and the quality of the hay. So far as the hay found in possession of Liladhar Bhagwanji is concerned, as the matter is being investigated by the police, it will be for the investigating police officer to make a panchnama before taking action as above.

o/c Sd/-

Additional Sectetary to Governme·t.

U.R. to C.S.D. No..G. 341, dated the 11th June 1953.

C.G.R. /18 / 8

Office of the R.L.A.

Paragraph 12 of the tender notice states that the person whose tender is accepted has to execute an agreement in the prescribed form within 15 days from the date of the intimation of the acceptance. The preamble of the agreement in the prescribed form refers to the deposit required to be made by the contractor. Clause 9 relates to the power of Government to forfeit the deposit and clause 13 provides for the payment of stamp duty by the contractor. It is not therefore open to the contractor to refuse to execute the agreement in the prescribed form nor can he contend that he is not bound by these terms. If the contractor refuses to execute the agreement or to act according to the conditions therein, it would be open to Government to put an end to the contractor and recover damages from the contractor for the breach. The contractor would however be entitled to the payment of the price of the grass which he has so far supplied. Before putting an end to the contract, the contractor will have to be given reasonable notice to fulfil the terms of the contract.

o/o Sd/-

24/6
Remembrancer of Legal Affairs.

u.T. R. to C.Sd/May, No. G- 364, dated the 25th June 1953.

).G.R./18 -8

Legal Department.

In his opinion No.G-214, dated the 13th April 1953, the R.L.A had advised the Civil Supplies Department that as the stock with the National Straw Products was required for despatching it to scarcity areas, the local officers may make a panchnama and thereafter the stock should be allowed to be despatched after keeping a sample and the matter may be entrusted to the police with a view to launch prosecution. Thereafter on 24th April 1953, the Civil Supplies Department wrote a letter to the District Magistrate, Surat asking Magistrate, & him to launch prosecution immediately and to obtain the permission of the court for disposal of muddmal which was required immediately for despatch to scarcity areas and for depositing the sale proceeds in the court. The partner of the National Straw Products has now requested the Civil Supplies Department to release the stock for their consumption so as to enable them to run their factory. The Civil Supplies Department proposes to send telegraphic instructions to the District Magistrate, Surat, to sell the stock to Messrs. National Straw Products if their offer of price is reasonable as the stock is now spoilt by rain. Before sending such telegraphic instructions the papers are shown to Legal Department for advice.

It is not clear from the papers whether a prosecution has been launched and whether the court's order has been obtained for disposal of muddamal. If the court has given a general order for disposal and for crediting the sale proceeds in the Court, then the stock can be sold to the National Straw Products for their consumption. But if as per the terms of the Civil Supplies Department letter to the District Magistrate at page 107, the court's orders are obtained for sale and despatch to scarcity areas only, then, the court will have to be approached for revised orders for selling it locally to the National Straw Products i.e. the accused firm.

Even if no prosecution has been so far launched, so long as the property is under attachment by the police the Director

P.T.O.

of ~~War~~ Civil Supplies (Fuel and Fodder) cannot pass orders for its disposal.

o/c Sd/-

Additional Secretary to Government.

U.R. to C.S.D.,No. G-414, dated the 13th July 1953.

In the linked case it was first stated that Messrs. Ratilal Gordhandas and Co. which holds a hay commission Agent's licence had in its possession 1,300 bales of hay lying at Bhay Bunder. The stock of hay was frozen and a show cause notice was issued to to Shri Ratilal. Inquiries made eve led that the Company was merely the selling agent and the bales in fact belonged to one Ganpat Gonavi Patil. Shri Patil has now come forward claiming the ownership of the bales. (See p. 11 ante) and requesting permission to sell the hay. He has also pointed out that ~~xhm~~ of the 1300 bales, 840 were purchased in Thana District and brought to Bombay during the period from 14th January 1953 to 4th February 1953 and 450 bales were imported from Kolaba District during the period from 16th February 1953 to 23rd February 1953 under the authority of a permit issued by the Mamlatdar of Panvel. In the circumstances the question for the consideration of the Remembrancer of Legal Affairs.— is whether Shri Patil can be prosecuted for breach of any of the provisions of the Bombay Hay (Control) Order, 1951.

2. It is not clear whether Shri Patil holds any kind of licence under the Bombay Hay (Control) order, 1951. Under clause 3 of the Order it was not competent to Shri Patil to export the bales of hay from Thana District except under a permit issued by the Director of Civil Supplies. The Civil Supplies Department has not stated whether such a permit was issued. If no permit has been issued, a breach of that clause would in that case be said to have been committed.

3. Assuming that Shri Patil does not hold any

licence, the possession by him of such large quantity of hay would be in contravention of clause 20(ii)(a) of the Order.

4. Similarly under clause 21 transport of hay from Thana to any stable, Railway yard or depot in Greater Bombay except without a permit from the Director of Civil Supplies is prohibited. If no such permit had been issued he can be prosecuted for breach of clause 21.

5. Lastly under clause 22(2) there is a total ban on receiving hay in Greater Bombay despatched from any place in Thana unless the person receiving is holding the license of a hay Commission agent, or a hay consumer importer or hayproducer.

6. In conclusion Shri Patil appears to have contravened clauses 3, 20(ii), 21 and 22 (2) of the Order. But before expressing a definite opinion on this point Civil Supplies Department is requested to ascertain whether he holds any licence under the Order, and whether permits were granted to him by the Director of Civil Supplies as required by clauses 3 and 21. That Department may also ascertain from the Collector of Kolaba what was the duration of the permit said to have been issued by the Mamlatdar of Panvel on the strength of which he imported 450 bales of hay from Kolaba District and whether the import was made as allowed thereby.

o/c sd/-

Additional Secretary to Government.

C.G.R./18-8 U.R. to C.S.D.No. G- 338 dated the 10th June 1953.

Legal Department.

In his letter dated the 25th May 1953, Shri Patil has stated that he purchased eight hundred bales in Thana District and imported them in Bombay from Balapur Port. In his recent letter dated the 23rd July 1953 he has stated that through a typographical error the word "Thana" was typed for Kolaba and that he has no connections whatever in Thana District for procurement of grass. His contention is that he is staying in Kolaba District and all his business connections are in Kolaba District. The Civil Supplies Department has also described all the one thousand three hundred bales which were auctioned as Nevada grass in the auction notice. From the address on the copy of the letter dated the 3rd January 1951 from the Director of Civil Supplies which he has produced, it appears that Shri Patil is a resident of Nevada in Kolaba District. In view of all these facts, it appears that it would be difficult to prove that he purchased hay in Thana and was carrying on business of a hay producer in the Thana District. Unless such evidence is forthcoming hecannot be prosecuted under clause 11 for doing the business of a hay-producer without a licence. As regards doing business of hay-consumer importer, hay commission agent or hay retailer in Greater Bombay, there is no evidence that he was doing any business in that capacity in Greater Bombay. The facts show that he was selling his hay through a commission agent shri Ratilal Gordhandas. This procedure could not be objected to in view of the letter of the Director of Civil Supplies dated the 3rd January, 1951 although it was issued under the old order viz., the order of 1944. Only clauses 2(c), 3, 25, 26 and 27 were made applicable to Kolaba District from 1st February 1953 (Vide C.S.D. Notification No. 1069/Fam, dated 26-1-53). The provisions regulating hay trade by licences was not made applicable to Kolaba hay.

Regarding breach of clause 3 of the Bombay Hay (Control) Order, 1951, no objecton can be taken to the despatch of hay from Nevada to Bombay which took place on 16th February 1953

and 19th February 1953 as such despatches were covered by the permit issued on the 14th February 1953 (This permit was valid upto 22nd Feb. 1953 only whereas some hay was despatched on the 23rd February 1953. This date is shown as the date of custom (entry) at Belapur Port. The question is only of a day and court is likely to treat this offence in respect of one hundred and fifty bales despatched as technical.

Then the questionis about eight hundred and forty bales. They are sent through a port in Thana District without a permit and therefore there is technically a breach of clause 3. But if the hay is Thana hay then prosecution should be filed but if it is Nevada hay and exported from Kolaba District then the offence would be difficult to be proved because the despatch through the Thana District would be transport in transit for which in most of the movement order specified provisionis made.

The next breach that is alleged is under clause 20(ii) (a) of the Order. As Shri Patil is neither a hay producer, a hay commission agent or hay retailer as defined inthe order the quantity held by him in Greater Bombay being in excess of that specified in paragraph (a), he can be said tohave committed a breach of that clause. The clause however is so worded that the quantity is specified only in respect of persons having cattle. The court might hol that the clause does not cover a case of the present type

A prosecution under clause 22(2) would however lie as there is a total ban on receiving hay in Greater Bombay despatched from any place in Thana District by the sea. The defence would however contend that the hay was despatched from Kolaba and it was transported in transit in Thana.

On the whole therefore the Department should verify before deciding on prosecution -

(1) whether for export of Thana hay there is a separate port and that Belapur Port is ordinarily for exporting Kolaba hay,

(2) Whether there is any evidence to prove that Shri

Patil was carrying on business ~~in~~ in Thana District, and

(3) whether this hay was Thana hay or ~~Ex~~ Nevada hay.

o/c Sd/-

Secretary to Government.

U.R.to C.S.D., No. G- 496, dated the 18th August 1953.

C.C.R./18-8

After the freezing order was issued Shri Khimji Lakhamsi informed the Director of Civil Supplies (Fuel and Fodder) that all the bales of hay in his possession had been disposed of to municipal contractors and that only Panchanama had been made. It is not clear whether Khara penda was in balance, of which this stock sold to Messrs. Arnold Brothers and cattle owners is included in the stock of 1,000 bales in question. However, it will be difficult to argue that 254 bales were inexcess of his normal requirements merely because he sold 220 bales against permit, especially when his daily requirement is 80 bales. As regards contraventionof clause 23, there is no proof that the actual sales took place at the Annesley godown. In this connection please see paragraph 7 of R.L.A.'s opinion No. G-341, dated the 11th June 1953. Hence it is not advisable tolaunch prosecution against Shri Khimji Lakhamsi either under clause 20(i) or 23 of the Bombay Hay (Control) Order, 1951.

As Shri Bhagwanji Chalabhai has admittedly purchased hay from the various parties mentioned in the list appended to his letter, dated the 22nd July 1953 and has entered into contract with different parties for supply of hay he appears to be carrying on the business of a hay retailer He could be charged under sub-clause (i) of clause 11 for not complying with condition 3 of licence in from E. The Charge under clause 11 (iv) may also be added.

As regards Vallabhadas Bahgwanji, it appears that the 36 bales lying in the open have been disposed of by him. It is clear from his letter dated the 16th June 1953 that 30 bales were held by him for the Swastik Aerated Waters Works. Besides there is no proof that He carries on business at the Annesley godown which maybe only a place of storage. Hence prosecution of Shri Vallabhadas Bhagwanji either under clause 20(i) or clause 23 does not seem advisable.

With regard to the question of disposal of the

muddamal, the attention of the Civil Supplies Department is invited to paragraph 9 of R.L.A's opinion No. G- 341, dated the 11th June 1953 wherein the manner of disposal of the frozen stock has been indicated.

o/c Sd -

Additional Secretary to Government.

U.O. to C.S.D, No. G-595, dated the 25th September 1953,

C.C.A. /20-8

Legal Department.

Shri Anandaji Udhaji is holder of a Hay Commission Agent's licence in form 'E' appended to the Bombay Hay (Control)Order, 1951, A hay commission agent is defined under clause 2(1) of the said order to mean a person carrying on in greater Bombay and Scheduled villages, business on commission of selling hay not belonging to himself. Condition 3 of the hay commission agent's licence in form 'E' requires a licensee to act as commission agent on behalf of a licenced hay producer only, and not to trade on any account in hay as hay producer or hay retailr. Shri Kondaji purchased hay from Messrs. Shivlal Punmchand and Ratilal Gordhandas and has been selling about 60,000 to65,000 Mds. of hay per month to Haffkine Institute and the Boilogical products. From this it is clear that he has been trading in hay on his own account and not on commission basis on behalf of any hay producer. Consequently he has acted in contravention of condition 3 of his licence in form 'E' for which a prosecution can lie against him under clause 11(i) of the Bombay Hay (Control) Order, 1951. A 'hay retailer' is, inter alia, defined under clause 2(g) of the order to mean a person who carries on the business of selling hay in Greater Bombay and Scheduled villages to consumers in quantities of less than a wagon load at a time. If it can be shown that Shri Kondaji has been selling hay in quantities of less than a wagon load at a time, a prosecution can also lie against him for trading as a retailer without licence in contravention of clause 11(iv) of the Bombay Hay (Control) Order, 1951.

Sd/-
o/c Additional Secretary to Government.

C.R. to C.C.D.(Hay), No. C-589, dated the dt. 3rd September 1953.

false entry in any book or record made with the intention of using it in any proceeding taken by law before a public servant as such also comes under fabricating false evidence. The contemplated proceeding in respect of which the false evidence was fabricated is the proceeding under clause 25 of the Bombay Hay (Control) Order, 1951. It is in view of that, that the R.L.A. had stated that the offence would fall under section 193 Indian Penal Code. This may, therefore, be brought again to the notice of the Crime Branch II and they may be requested to made an application to the Court for giving permission to the Police to investigate in the matter.

The Hay control has been lifted from 1st November 1953 in Greater Bombay and it is for the Civil Supplies Department to consider whether the matter should be pursued.

o/c sd/- D.H.I.

5/11

U.P. to C.C.D., No.C-682, dated the 9th November 1953.

C.G.R./20/8

Office of the R.L.A.

Shri Sudriprasad Ramsunder Tiwari a licensee under the Bombay Hay (Control) Order, 1951 made false entries in the duplicate cash memo prepared in the name of Messrs. Sarosh Dairy Farm on the 11th April 1952 in respect of 14 and 10 bales of hay respectively. In the original cash memo the rates were mentioned as Rs.45 and Rs.41 per 1,000 lbs. whereas in the duplicate cash memo the rates were shown as ₹43/-and ₹40/- respectively. As regards this offence R.L.A. advised in his orinion No.G-723, dated the 29th December 1952 that a prosecution would lie against Shri Tiwari under section 193 of the Indian Penal Code. The Civil Supplies Department then requested the Crime BranchII to launch the prosecution. As the offence under section 193 Indian Penal Code is a non-cognizable one, the Police Sbu-Inspector made an application before the Chief Presedency Migistrate on the 8th August 1953 asking for permission to investigate inthe matter . The learned Chief Presidency Magistrate held that section 193 did not apply to the case as that section only applied when judicial proceedings were in progress and as there were no judicial proceedings in progress inthis case, the Magistrate rejected the application. The Crime Branch II therefore returned the papers to the Civil Supplies Department. The Civil Supplies Department have now referred this case to the R.D.A. with a request to offer remarks whether the licensee can be charged under any other section of the Indian Penal Code for the said offence.

The view taken by the learned Chief Presidency Magistrate does not appear to be correct. It appears that the second part of section 193 Indian Penal Code which makes punishable fabricating false evidence in any case other than that of fabricating evidence in any stage of judicial proceedings has not been brought to the notice of the learned Magistrate. The definition of 'fabricating false evidence' given in section 192 makes it very clear that any

Office of the R.L.A.

The Solicitors in their letter dated the 30th September 1953 have challenged the validity of the Bombay Hay (Control) Order, 1951 and the orders dated the 23rd April 1953 and the 14th August 1953 of the Director of Civil Supplies (Fuel and Fodder), refusing hay retailer's licence to their client, Shri Tilakdhar Jhagwanji Chaswalla. Their contention is that no reason was assigned in the first order and the reason given in the second order is illegal, ultra vires and without jurisdiction and amounts to discrimination and restraint on carrying on the hay trade by their client and therefore contrary to the provisions of the Constitution.

For the reasons stated in R.I.A.'s opinion No. G-331, dated the 1st August 1951 the Bombay Hay Control) Order, 1951 is validly continued in force. Clause 12(iii) of the said order does not require that the reasons should be communicated to the party. The reasons for refusal have been recorded by the Licensing Authority and even communicated in letter dated the 14th August 1953. Hence, proceedings, if launched by the part would have been defensible.

The above discussion is however of academic interest only as the control on hay is being lifted in Greater Bombay from 1st November 1953 and no cause of action would survive thereafter.

o/c Sd/- F.M.L.
30/10

D.R. to C.G.R./Hay, no.G-579, dated the 31st October 1953.

C.G.R./20-S

Office of the R.L.A.,

The view taken by the Civil Supplies Department that as the Government of India in their letter dated the 20th June 1953 have agreed to the continuance of the Bombay Hay (Control Order, 1951 till the end of December 1953 only, that order would automatically cease to remain in force with effect from 1st January 1954 and that it is not necessary to cancel the said order is not correct. The Bombay Hay (Control Order, 1951 was made by the State Government under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 read with the delegation notification of the Government of India, Ministry of Food and Agriculture Agriculture) No.F.16-2/51-EP, dated the 27th April 1951 as amended by notification of even number dated the 25th July 1951. This delegation ceased to be in force from 26th August 1951 but in his opinion No.G-331, dated the 1st August 1951, the Remembrancer of Legal Affairs advised that the Bombay Hay (Control Order made by the State Government in virtue of the delegation would continue in force even after the expiry of the period of delegation as the Act under which the order was made continued to be in force and the only effect of the expiry of delegation would be that thereafter this Government would not be competent to amend the said order or issue a fresh order. The Government of India have now suggested that if the Bombay Hay (Control) Order, 1951 is no more necessary it should be withdrawn. The mere letter from the Government of India dated the 20th June 1953 that they agree to the continuance of the order till end of December 1953 will not automatically have the effect of cancellation of that order from 1st January 1954. The Government of India will have to be approached to cancel the order from 1st January 1954 as the State Government has no power to do so in the absence any delegation to that effect.

o/c Sd/- P.M.L.
23/12
Remembrancer of Legal Affairs.

U.R.To C.S.D., No.G-793, dated the 24th December 1953.